

United States District Court Middle District of Tennessee

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U.S. DISTRICT COURT
MID. DIST. TENN.

) Craig Cunningham

) Plaintiff, Pro-se

)

) v.

CIVIL ACTION NO.

)

) Trilegiant Corporation, Trilegiant Insurance Services,

) Affinion Publishing, LLC, Verde Energy USA, Inc, Safe Data Trust Inc

) Larry Rolen, Alan Field, Exclusive Incentive Marketing Inc., Douglas Freedman

) Jason Stavitsky

) Defendants.

Plaintiff's Complaint and Jury Demand

1. The Plaintiff in this case is Craig Cunningham, a natural person and was resident of Davidson County at all times relevant to the complaint, and currently has a mailing address of 5543 Edmondson Pike, ste 248, Nashville, TN 37211
2. Trilegiant Corporation is a corporation that advertised their products/services during the phone call, specifically "Great fun" and "Shopper's Advantage" according to the websites www.shoppersadvantage.com and www.greatfun.com. Their address for service of process is via registered agent at 2711 Centerville Rd., Ste 400 Wilmington, DE 19808.
3. Trilegiant Insurance Services is a service provider who was offered products/services during the call, which qualifies them to be a caller pursuant to the TCPA, according to the website www.shoppersadvantage.com. They can be served via registered agent at 2711 Centerville Rd. Ste 400, Wilmington, DE 19808
4. Affinion Publishing, LLC is the parent company for Trilegiant Corporation and is responsible for the calls and services offered on the calls. Pursuant to the TCPA,

they are deemed to be a "caller." They can be served via registered agent

Corporation Service Company, 2711 Centerville Ste 400 Wilmington, DE 19808.

5. Verde Energy USA, Inc., is an energy company that was offering energy services during the phone call and qualifies as a "caller" per the TCPA and can be served via registered agent Corporation Service Company, 2711 Centerville Rd., Ste 400, Wilmington, DE 19808.
6. Safe Data Trust Inc., is a credit monitoring company that offered products/services during the phone calls, which qualifies them as a "caller" under the TCPA that is a Tennessee Corporation, and can be served via registered agent Brian C Smith at 3918 Tennessee Ave, ste 100 Chattanooga, TN 37409.
7. Larry Rolen is the chief operations officer of Safe Data Trust Inc., that is responsible and liable for the calls made to the Plaintiff. He can be served at 3914 St. Elmo Ave., Chattanooga, TN 37409
8. Alan Field is the chief technology officer of Safe Data Trust Inc., that is responsible and liable for the phone calls and can be served at 3914 St. Elmo Ave., Chattanooga, TN 37409
9. Exclusive Incentive Marketing Inc is a corporation that is responsible for the products and services offered during the call in question according to the website savesp.com and savingspectacular.com and is liable under the TCPA as a "caller". They can be served via registered agent East Biz.com inc, 5348 Vegas Drive, Las Vegas, NV 89108
10. Douglas Freedman is one of two executives of Exclusive Incentive Marketing Inc., and as such is personally and directly liable for the illegal calls placed to market

the products/services of Exclusive Incentive Marketing Inc. He can be served at East Biz.com, Inc 5348 Vegas Drive, Las Vegas, NV 89108.

11. Jason Stavitsky is the other executive for Exclusive Incentive Marketing Inc. He can be served at East Biz.com, Inc., 5348 Vegas Drive, Las Vegas, NV 89108 and is personally and directly liable for the products/services offered on the illegal phone calls offered by Exclusive Incentive Marketing, Inc.

Jurisdiction

12. Jurisdiction of this court arises as the acts happened. Venue in this District is proper in that the defendants transact business here, and the acts and transactions occurred here.

FACTUAL ALLEGATIONS

13. In November 2014, the Plaintiff received an automated phone call with a pre-recorded message to his cell phone. The calls were not related to any emergency purpose, but rather were a telemarketing pitch offering a free gift card as a reward to try various products/services.
14. The Plaintiff is unsure how the Defendants obtained his cell phone number as he never gave it to them and never gave express or implied consent for the defendants to call his cell phone using an automated telephone dialing system. The Plaintiff has never signed anything permitting anyone to call him using a pre-recorded message and automated telephone dialing system.

15. The Plaintiff alleges each and every defendant is liable under the following theories of liability: Direct liability, vicarious liability, joint liability, several liability, vicarious liability, and personal liability for the individual actors.
16. For vicarious liability, the doctrine of agency, apparent authority, and ratification apply to each and every defendant for the phone calls to the Plaintiff and through an agency agreement with the other Defendants. The Defendants are the knowing beneficiaries of the illegal conduct of the illegal phone calls.
17. In the phone call, the Plaintiff was offered a \$100 gift card if he signed up for a trial program. After verifying that the Plaintiff had a credit card, he was passed on from some call rep in the Philippines to a USA based rep who stated he was with "Call management solutions". The agent then repeated the same gift card offer if the Plaintiff participated in a trial offer from savings spectacular from Exclusive Incentive Marketing Inc.
18. The agent then continued to offer gift cards, dining certificates, free gas cards, etc...for additional programs on the same call, which was for "Great fun" from Trilegiant corp and Affinion publishing LLC, "Shoppers advantage" from Trilegiant corp, Trilegiant Insurance, and Affinion Publishing, Energy Saving services from Verde Energy USA Inc., and Safe Data trust from safe data trust Inc.
19. The Plaintiff notes that he never actually signed up for any of these services and intentionally gave spurious credit card information to feign interest only to ascertain the true name, address, and phone numbers of the callers and service providers that hired the 3rd parties to place illegal telemarketing calls on their behalf.

20. The Plaintiff also notes that Defendant Trilegiant, Affinion, and Trilegiant insurance in particular as a group of related companies have a very, very, very long history of complaints from consumers, the Better Business Bureau, at least 16 state attorney's general to include the Tennessee Attorney general, multiple class actions lawsuits, and regulatory enforcement actions regarding their deceptive marketing, unauthorized billing practices, and generally deceptive trade practices resulting in tens of millions of dollars in restitution and refunds to consumers in each instance. For example, in Arizona, they paid \$30 million dollars, Ny they paid \$11 million dollars, and California they paid \$14.5 million dollars for deceptive marketing and business practices.
21. These phone calls violated the TCPA in two ways, first by having a pre-recorded message, and second by the automated nature of them. Additionally, the pre-recorded messages violated a second section of the TCPA by not listing the name, address, and phone number of the entities responsible for the phone calls.

CAUSES OF ACTION:

COUNT I

Violations of the Telephone Consumer Protection Act (TCPA)

22. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.
23. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by placing unsolicited and unwelcome telephone calls to the Plaintiff's cell

phone. These phone calls also violated the TCPA by having an pre-recorded message that did not contain the required identification information for the callers.

COUNT II

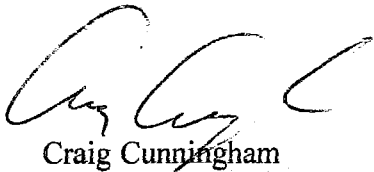
Violations of the Telephone Consumer Protection Act (TCPA)

24. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.
25. The foregoing actions by the Defendants constitute multiple breaches of the TCPA by placing unsolicited and unwelcome telephone calls to the Plaintiff's cell phone. These phone calls also violated the TCPA by having an pre-recorded message and by placing automated telephone calls.

PRAYER FOR DAMAGES AND RELIEFS

- A. WHEREFORE, Plaintiff, Cunningham, respectfully prays and requests that judgment be entered against Defendants
 - B. Statutory damages of \$3000 against each defendant
 - C. Pre-judgment interest from the date of the phone calls.
 - D. Punitive damages for against each defendant for \$30,000.
 - E. Attorney's fees for bringing this action; and
 - F. Costs of bringing this action; and
 - G. For such other and further relief as the Court may deem just and proper
- I, Craig Cunningham, Affiant, hereby attest to and certify that the facts contained in the foregoing complaint are true and correct to the best of my knowledge, information and belief and that a true and correct copy of the foregoing was sent to the defendants in this case.

Respectfully submitted,



Craig Cunningham

Plaintiff, Pro-se

Mailing address:

5543 Edmondson Pike, ste 248

Nashville, tn 37211

828-291-7465

November 5, 2014